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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,410	03/23/2004	Wendy Zellen	1358-11	2308

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GOWAN INTELLECTUAL PROPERTY
1075 NORTH SERVICE ROAD WEST
SUITE 203
OAKVILLE, ON L6M-2G2
CANADA

EXAMINER

TRAN LIEN, THUY

ART UNIT PAPER NUMBER

1761

DATE MAILED: 12/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/806,410

Applicant(s)

ZELLEN ET AL.

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

Claims 2-3,9,11 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 2, what does applicant mean by " mixtures and combinations thereof"? What is the difference between mixtures of the oil/fat and combinations of the oil/fat?

In claim 3, what does applicant mean by the oil having a freezing point of " between +5 and -35 degree C"? 5 degree C is not freezing temperature. Normal refrigeration temperature is around 2.7 degree C.

In claim 9, the recitation of " the pie crust mixture" does not antecedent basis.

In claim 11, the recitation of the freezing temperature range has the same problem as claim 3. In step b, what does applicant mean by cooling water to the temperature range of 0-15 degree C? At 0 degree C, the water would freeze; thus, it is not just cooling.

Also, if the water is frozen, then how can it be mixed with the flour and oil/fat in step c.

Claim 14 has the same problem as claim 2.

Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Applicant claims a pie crust and a method of making it. The method comprises the steps of cooling water to a temperature in the range of 0-15 degree C and mixing the flour, cooled water and the frozen oil/fat. However, it is not understood how the

method can be carried out to make the crust if the water is cooled to 0 degree C because the water will freeze at that temperature. The specification does not teach how frozen water can be mixed with the flour and oil/fat system. Furthermore, it is not seen how the oil/fat will be frozen at 5 degree C because that is refrigeration temperature. The specification does not teach how the mixing can be done and the freezing of the oil/fat can be done if the steps are carried using certain temperature within the ranges disclosed.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2,4,9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Kincs et al.

Kincs et al disclose a pie crust comprising flour, water and frozen oil system. The oil can be soybean oil, cottonseed oil, peanut oil, corn oil and combinations thereof. Kincs et al do not disclose that the oil is winterized; thus, the oil is non-winterized (see page 2 lines 28-47, col. 4 lines 13-16, col. 5 lines 1-10)

Kincs et al disclose the oil is solidify by chilling; thus it is frozen. Whether the crust is cold mixed or not is a difference in the processing step which does not determine the patentability of the product. Also, the temperature at which the constituents are mixed is a difference in processing step which does not determine the patentability of the product.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 3, 5, 6-8 and 11-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kincs et al. in view of Peleg et al and the book " Professional Baking".

Kincs et al disclose a process to make palletized shortening. The process comprises the steps of melting vegetable oil such as it is liquefied and chilling the oil to solidify it to form pellets. The vegetable oil will typically be primarily soybean oil, cottonseed oil, peanut oil, corn oil and combinations thereof. The chilling takes place at temperature range of about 12-35 degree C, depending upon the vegetable oil being processed. The pellets are used in making dough products such as pie crusts, pizza crust and the like. The dough products comprise ingredients such as flour, sweeteners, egg, mil and water. (see col. 1 lines 30-44, col. 2 lines 28-47, lines 62-65, col. 4 lines 13-16, col. 5 lines 1-8)

While Kincs et al disclose using the solidified oil in pie crust, they do not disclose the specific formulation of the crust as claimed. Also, they do not disclose the processing temperature and the temperature of water and flour and the steps of cooling water and mixing the cooled water with the flour and frozen oil/fat.

Peleg et al disclose a pie crust and method of making it. They disclose the components of the pie crust and the composition as shown in column 2. They also teach to use water chilled to a temperature range of 1.6-7.1 degree C to form the dough. They teach conventional dough forming procedure for forming the crust including the step of chilling the flour components to a temperature of less than about 9.9 degree C. (col. 2, col. 4 lines 1-10)

The textbook teaches the pie dough should be kept cool about 15 degree C during mixing and makeup to keep the consistency of the fat and for gluten development.

Kincs et al teach to make pie crust; thus, it would have been obvious to one skilled in the art to use any known dough formulation to make the crust. Such formulation is exemplified in the Peleg et al teaching. It would also have been obvious to vary the formulation depending on the type of crust wanted and the flavor, texture desired. Such variation would have been within the skill of one in the art. While the oil in Kincs et al is not frozen to the same temperature as claimed, Kincs et al teach the temperature can vary depending upon the vegetable oil being processed. Thus, it would have been obvious to use lower temperature when the oil being processed requires lower temperature to solidify. The temperature is a result-effective variable

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which can be determined by one skilled in the art. It would also have been obvious to chill the flour and water and to carry out the mixing at the cooled temperature for the reason taught by Peleg et al and the baking textbook. Such processing steps are conventional as shown by the prior art. The amount of up to 50% comprising shaved, flaked or ground ice include 0 amount of such component. Furthermore, it is notoriously well known in the art to use ice to make chilled water and both Peleg and the textbook teach to use chilled water in the making of pie crust.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Rielley et al disclose a pourable solid shortening composition.

Furuhashi et al disclose frozen pie dough.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday, Wednesday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

December 11, 2006

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1702